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Summoning to court: *ordines iudiciarii* and Swedish medieval legislation

Abstract

The development of the law of summons demonstrates how the latest international innovations in procedural law, which the twelfth- and thirteenth-century canonists had developed, were adopted first in the Swedish provincial laws and then in the laws of the realm. The canon law of summons, adopted in the Swedish medieval laws, was part of two broader developments. First, the rules on summons were probably part of the canon law idea of *ordo iudiciarius*, which was also adopted in Sweden. In Sweden, the rules on summons were always accompanied by a separate procedural chapter, which regulated the whole procedure chronologically from beginning to end – although some laws were more elaborate on some details than others were. The article suggests that the procedural chapters were in fact the Swedish equivalent of *ordines*, although the Swedish '*ordines*' were of course legislation, not scholarly literature. Second, the Swedish '*ordines iudiciarii*' with their rules on summons reflect inquisitorial principle and canon law influence making its way into the Swedish procedure. The Swedish rulers, just as their counterparts elsewhere in Europe, were making a conscious effort to organise court procedures into more uniform and efficient form.

Key words: Middle Ages, canon law, legal procedure, Sweden

Introduction

The law of summons, or citation, is about making sure that parties to a legal case appear in court. Without a working system of summons, legal proceedings function poorly. The rules on how, when and where parties to lawsuits are to appear, and what happens if they fail to do so, help judicial orders function effectively. As medieval and early modern legal literature often expressed it, 'summons is the beginning or the fundament of the legal process'.[1]

The period from the mid-twelfth to the mid-thirteenth century was a time when the entirety of Western law went through fundamental changes. Fomenting the rise of the Church to a well-

organised European power from the late eleventh century onwards, the canon lawyers of the Catholic Church acted as the powerhouse of legal innovation. In addition to producing new law (*ius novum*) in the form of papal letters and scholarly treatises, canon lawyers made use of the simultaneous rise universities in Northern Italy and elsewhere.[2] As the saying went, *ecclesia vivit lege Romana*. By the thirteenth century, this union of Roman and canon law led to the emergence of *ius commune*, a common law of Europe, which served as a common basis for developing legal argumentation and methodology in all parts of Europe which scholarly influence reached. *Ius commune* covered all areas of law, from private law to criminal law and procedure. As for legal procedures, the ecclesiastical court system became clearly hierarchical, culminating in the papal courts of Rome. After the Fourth Lateran Council of 1215, modern modes of proofs such as confession, witness statements and documentary evidence – in short, Roman-canonical procedure – rapidly replaced archaic forms of proofs such as judicial ordeals. In fact, the abolition of ordeals would not have been thinkable without a viable alternative – the Roman-canonical procedure – already in place.[3] As legal scholars took to work, law of procedure became increasingly standardised. Civil and criminal procedures grew apart, as public interest now demanded that courts in serious cases of crime act *ex officio* and inquisitorially, instead of waiting for private actors to carry forward their claims.

The literature on the legal changes of the High Middle Ages and the rise of medieval legal scholarship is enormous.[4] It is therefore surprising to find important pieces of the *ius commune* procedure yet to receive systematic scholarly treatment. The summons is one such institution.[5] Medieval canon law developed a system of its own to ensure that parties turned up in court on the day when their case was heard. This became the law of summons (*in ius vocatio* or *citatio*), the legal institution which initiated the court proceedings. Around the year 1000, canonists were showing increased interest in procedural questions and legal procedure as a whole. From the writings of canonists emerged a body of literature usually referred to as *ordo iudiciarius* or *iudiciorum*, which roughly translates as procedural system or due process. Although he did not yet formulate his views on legal procedure systematically, Ivo of Chartres is a good example of the first canonists interested in these matters.[6] Another important landmark in the history of *ordo iudiciarius* was the letter of Bulgarus to Haimeric, the Chancellor to Pope Innocent II, in the 1130s. The letter was the glossator's response to Haimeric's request asking Bulgarus to summarise the rules of procedure, which he did.[7] During the second half of the twelfth century, canonists such as Paucapalea, Stephen of Tournai, and Rufinus developed *ordines iudiciarii* further, establishing the basic structure of canon law procedure. The *ordines* typically presented the legal procedure

chronologically, from the summons to the appeals, from A to Z. The procedure described in the *ordines iudiciarii* replaced the earlier procedure based on oaths, compurgators and ordeals.[8]

The term *ordo iudiciarius* began to be used in the papal letters from around the middle of the twelfth century. *Ordo iudiciarius* guaranteed the recipients of those letters that their cases would be heard following the rules of the modernised canon law of proof, instead of having to submit themselves to ordeals or other older forms of proof. Pope Alexander III was especially active in promoting the new procedural forms in his letters to litigants. Although the *ordines* provided the sole lawful procedural guide for the canonical process, during the twelfth century the new procedure still advanced slowly.[9] After the prohibition of ordeals in 1215, the new procedure began to spread more rapidly. Pope Gregory IX's *Liber extra* (1234), then, marked an important milestone in the development of the *ordines* towards the massive *Speculum iudiciale* of Guillielmus Durantis (1298). The work of Durantis was the culmination of the development of procedural *ius commune*.[10]

In conjunction with the rest of the procedural *ius commune*, the law of summons developed in the writings of the twelfth- and thirteenth-century canonists, and in the papal legislation of the time.[11] The canon law of procedure profoundly influenced secular law in many parts of Christendom, although because they were oral procedures, not usually recorded, it is not easy to chart the early influence of the new canonical procedure.[12]

In the heartlands of continental Europe, the twelfth and thirteenth centuries were also the time when criminal procedure gradually grew apart from civil procedure. Before the thirteenth century (and at least not without a considerable degree of anachronism), one cannot really speak of criminal and civil procedure separately. The different modes of procedure first developed in the writings of canonists and in the practice of ecclesiastical courts. From there, they gradually spread to secular jurisdictions. As is usual for large-scale legal transformations, the transition from ordeals to new procedural modes occurred at different speeds in different European regions. The precise line between criminal and civil cases remained far from clear, and there were large geographical differences. Addressing this in detail is beyond the scope of this article, but it is evident that a clear-cut separation of criminal and civil procedure required learned jurists. As such jurists were in short supply, the distinction could not fully develop. This was often the case in the peripheral areas of Europe, such as Scandinavia.[13]

In the strict sense, the distinct criminal procedure was equal to inquisitorial procedure, which applied to severe crimes only. The inquisitorial procedure had emerged in the canon law practice of the 1160s, when papal delegates started to take initiative in bringing ill-behaving churchmen to

court, whenever 'rumour' (*fama*) called for action. Thus, no longer did the proceedings depend on active private accusers.[14] From the perspective of criminal procedure distinct from civil procedure, this was revolutionary and demanded effective political power.

The inquisitorial procedure was 'extraordinary' (*processus extraordinarius*). The sanctioning of minor crimes continued accusatorially, which remained the default procedure (*processus ordinarius*) and was practically the same as civil procedure. In between these two main modes of procedure was the denunciatory procedure, which a judge initiated *ex officio* and based on a denunciation but which then continued in the same way as accusatorial procedure.[15] The dividing line between the two modes of procedure was otherwise flexible as well, and the court could move from inquisitorial to accusatorial procedure, or vice versa, if it was deemed necessary.[16] By the end of the Middle Ages, inquisitorial procedure had become dominant in many parts of Europe. The process of denunciation mostly merged with that of inquisition, which also extended to cover the kinds of crimes previously processed accusatorially.

This article argues that the law of summons in medieval Swedish provincial legislation was a transplant of canon law. Since the publication of Alan Watson's hugely influential book of 1974,[17] legal transplants have caused an enormous amount of discussion in legal history and comparative law.[18] When referring to connections and influences between legal orders, the notion of legal transplantation is now part of any serious, not only comparatist's, but also legal historian's, toolbox. It is typical for legal transplants that the legal institutions change as they move from one legal order to another and need to adapt to new legal and sociopolitical environments.[19] This was also true of canon law of summons when transplanted to Sweden. Some provincial laws followed canon law only roughly, while, as will be shown later, other copied parts of canon law almost *verbatim*.

No comprehensive study has been written on the influence of canon law on medieval Swedish legal procedure. Because this article will only concentrate on one legal institution, it obviously cannot fully remedy the lack. The emergence of a law of summons in Sweden is, however, crucially important in the construction of medieval law as an increasingly centralised normative system, which during the late Middle Ages gradually replaced a legal procedure previously dominated by private interests.

The aim of this article is to discuss to what extent the canon law of summons found its way into Swedish medieval laws.[20] Why did summons appear only in some of the provincial laws, but not in all of them? How did the Swedish law of summons come to differ from canon law, the procedural system of which was profoundly different from the Swedish system? To what extent was the

medieval Swedish law of summons part of something that can be described as Swedish *ordo iudiciarius*?

This article first describes the medieval canon law of summons, after which the background of Swedish medieval law is explained. The article then moves on to the law of summons such as it emerged in medieval Swedish legislation. Before the conclusions, the possibility of Danish influence on Swedish law of summons is discussed.

The canon law of summons

The law of summons was part of the canon law of procedure, which, as part of the European *ius commune*, had a profound impact on law almost everywhere in Europe. Canon law of procedure strongly influenced secular laws of medieval Europe, and rules of summons were no exception. As was often the case, local variations of common themes occurred. Joanna Carraway Vitiello describes the citation procedures in the town of Reggio in northern Italy: according to the town statutes, a blast of trumpet accompanied the summons so that the whole neighbourhood became aware of what was happening and of the details of the legal case.[21]

It is, however, now more important to look at the law in books. Canonists considered summons (*citatio*) as part of the preparatory phase (*praeparatoria iudiciorum*) leading to the actual legal proceedings (*instantia*). Before obtaining summons, the plaintiff needed to hand in a libel letter (*libellus*) to the judge. In case he would lose the case, the plaintiff needed to promise a *cautio*, usually reinforced by a guarantee (*cautio fideiussoria*). If the plaintiff had no money, he would need to take an oath instead (*cautio iuratoria*). As so often, *ius commune* literature was full of different opinions as to the details concerning the form of the libel, the *cautio*, and the guarantee, and as to the exceptions to the main rules.[22] For the purposes of this article, the differences in these details are not crucial. However, it is important to note that a whole scholarship and practice of preparatory measures existed in *ius commune.* It was to this context of civil procedure that the institution of summons originally belonged.

Kenneth Pennington has observed that the jurists of the second half of the twelfth century were ‘conscious of the defendant’s right to a trial’ and not only that, but to ‘a trial conducted according to the rules of *ordo iudiciarius*’. Paucapalea, in his *Summa*, linked the ecclesiastical procedure to the

story of Adam and Eve at Genesis 3:12, in which God 'summons' Adam to reply to a 'charge' concerning the forbidden fruit, and Adam then 'pleads' innocent.

Stephen of Tournai was the first canonist to define the different elements of the *ordo* in more detail. The essential contents of the *ordines* are already encapsulated in Stephen's *Summa*, upon which later canonists expanded:

> 'The defendant shall be summoned before his own judges and be legitimately called by three edicts or one peremptory edict. He must be permitted to have legitimate delays. The accusation must be formally presented in writing. Legitimate witnesses must be produced. A decision may be rendered only after someone has been convicted or confessed. The decision must be in writing.'[23]

The elements of the *ordo* can thus be listed as follows: 1. The defendant's right to be summoned 2. before his own judge, and 3. by a certain number of summons. 4. Legitimate delays are permitted. 5. Witnesses are needed. 6. The court can decide the case only after it has examined it, and 7. the decision needs to be in writing.

After Stephen, the *ordines* grew in number and in the degree of detail. The more the Church wished to get rid of the old system of proof based on ordeals and oaths, the more necessary it became to define the alternative as clearly as possible. The prohibition of the Fourth Lateran Council of 1215 against churchmen participating in ordeals was an important milestone here, too.

Tancred of Bologna's influential *ordo iudiciarius* dates to around that time, between 1214 and 1216. His treatise included a separate chapter on citation, which treated the subject at length. Following Tancred's example, citation became one of the standard topics of thirteenth century procedural literature.[24]

The Church's most important law book, Pope Gregory IX's decretal collection *Liber extra* (1234) already takes it for granted that defendants need to be summoned to court. The second book, although otherwise arranged according to the chronological order of the trial, treats citation in connection with contumacy and only at the end of the book.[25] However, the decretal collection does not specify one particular right way of citation. *Liber extra* leaves the details of summoning to scholars and local customs. Starting with Hostiensis, decretalists commented on *Liber extra*, and, relying on earlier canonists' work, further elaborated the rules of citation.[26]

Authors of *ordines iudiciarii* habitually treated the subject of summons. Most of the rules on citation and its effects followed the Law of Justinian, while the original input of canon law was not as significant as in some other branches of law.[27] The canonists considered summons an essential part of the preparatory measures leading to trial (*principium et fundamentum causae*). Without a legal summons, the decision of a court was invalid. Summons was an official act and thus performed by the judge. There were limits as to who could be summoned to court (*ratione personarum*) and when (*ratione temporis*). Many authors agreed that one could not be summoned during festive days, war, one's own wedding, while attending a funeral or another trial. Priests during religious ceremonies, monks, high officials and papal legates could not be summoned. Because of 'reverence and honour' attached to their person, some others could only be summoned with the court's permission. These people included parents or patrons of the plaintiff.[28]

When a judge decided to issue a summons, he in fact declared the case admissible. Inversely, if he did not agree to issue a summons, it meant that the case was not admissible. In this case, the libel letter was normally returned. If the summons was issued, either the judge himself or his assistants delivered it to the summoned party. The summoning was usually done in written form (*libellus citationis*), although some authors allowed for an oral summons. Surprisingly, most *ius commune* authors did not specify how much time was to be reserved for the summoned party to appear in court. Some, however, did mention a minimum time, which depended on the distance between the location where the summoned resided and the court. Canon law included more precise procedural deadlines (*induciae citatoriae*), which depended on the distance to court, the status of the parties, and the nature of the case. The main customary rule was, however, that the deadlines belonged to the arbitrary powers of the judge.[29]

The number of citations was one of the points that was much discussed. There were many variations. According to some there were to be three citations, while others thought one or two sufficed. Some authors were prepared to leave the amount of citations to the judge's arbitration. Only the last citation was usually peremptory, the absence of the summoned party thus leading to contumacy, but some authors were willing to allow two or even three peremptory citations. Sanctions were attached to peremptory citations. Most often, a 30-day period was required between issuing the edicts (the technical term often used for citation), but intervals of many other lengths appear in the literature, and some authors leave the length of the period between edicts for the judge to decide.[30]

After the citation and the libel letter had been given to the summoned, the case was considered formally initiated. The same case could no longer be filed in another court, and the claims presented in the libel could not be changed. Counting from the moment of receiving the citation, the summoned party was given a time limit to answer to the charges (*induciae deliberatoriae*). This was, following again the Law of Justinian, 20 days, but the time limit was generally considered a matter of judicial arbitration. If no *induciae deliberatoriae* was given, the ensuing *litis contestation* and the final decision were null and void. The cited party could also present a counterclaim, in which case the first plaintiff was also entitled to file his answer within a specified time limit.[31]

How were the rules laid out in the literature that followed legal practice? Little information exists as to how the citation worked in practice, because the summons phase of the proceeding was normally not recorded in the 'acta'. Although literature suggests this possibility, written libels were, according to Donahue, probably not presented to the judge in this first phase. This is because the minutes of the ecclesiastical courts usually mention that the libel was introduced to the courts only after the defendant had appeared.[32]

Did it make a difference from the point of view of citation whether the process was civil or criminal, or inquisitorial or accusatorial? When the first *ordines* were written in the second half of the twelfth century, the distinction between civil and criminal procedure was just developing; by the end of the thirteenth century, the distinction was fully developed.[33] Yet, the similarities between civil and criminal procedure of the *ius commune* were far more important than the differences.[34]

Thus, the *ius commune* authors do not seem to make a distinction between civil and criminal cases as to whether a defendant should be summoned. Those accused of a crime needed to receive a summons as well, as Tancred noted in his *Summula de criminibus*.[35] According to Tancred, even those charged with notorious crimes had to be summoned, even though the rules of *ordo* did not otherwise all apply. Tancred, however, does not specify how the citation was to be performed,[36] nor is the mode of citation explained in detail in any of the central decretals regulating inquisitorial procedure, such as *Licet heli* (1199) or *Qualiter et quando* (1215). One may assume that citation was in practice less significant in inquisitorial cases, which began *ex officio* and in which proceedings often started by taking the defendant into custody. Massimo Vallerani, in his important study on the criminal law practice of late medieval Bologna and Perugia, does not even mention citation.[37]

For the purposes of this article, however, the extent to which summons figured in civil as opposed to criminal cases is not important. As we will see in what follows, the difference between criminal

and civil procedure did not yet emerge in medieval Swedish laws. Swedish political powers, when the medieval laws were drafted, were not yet strong enough to extend *ex officio* proceedings much, but instead had to limit it to some exceptional cases which threatened the social order. A systematic distinction between civil and criminal procedure would also have required legal scholarship, which did not exist.

The main observation from the point of view of this article is that a large literature emerged around the institution of summons. It was, furthermore, an integral part of the procedural teachings of *ius commune*, teachings that covered the entire procedure from beginning to end. Taking one piece of this complicated regulation and adding that piece to a completely different legal tradition was not a straightforward task of legal transplantation. Yet this is precisely what was done when the rules of citation were introduced into medieval Swedish legislation.

The Swedish *ordines iudiciarii*?

To what extent is the development towards increased interest in procedural questions discernible in Sweden? The main channel through which the Church sought to influence the local law was provincial legislation.[38] Of course the 'general' canon law was, at least in theory, the common law for all of Christendom, Sweden included. However, local variations were allowed and common.[39] Canon law needed local implementation. In practice, the highly developed system of Church law was dependent on learned jurists, which were in short supply in peripheral areas such as Sweden. To ensure that its legal rules gained significance at the local level, it was prudent for the Church to attempt to influence the contents of the provincial laws directly. This practical solution necessarily involved compromises, leaving aside the finer details of canon law and introducing only the features that were considered the most essential.

The Swedish medieval provincial laws were put into writing during the thirteenth and early fourteenth centuries, during the period from the 1220s to about the 1340s. Together with the Saxon Mirror, *Coutumes de Beauvaisis* and the *Siete Partidas*, the Swedish provincial laws thus belong to the wave of European law books that followed the model of written law exemplified by the *Liber extra*.[40]

The laws of the neighbouring Scandinavian countries are even older than the Swedish ones. Both Denmark and Norway experienced an earlier move towards state building and centralisation of royal power than Sweden. Centralisation and state building, in turn, intimately link with legislative powers. Not surprisingly, the Norwegian, Icelandic, and Danish provincial laws are older than the Swedish ones, and date roughly to the same or even an earlier period than the German, French, and Castilian examples mentioned above.[41] The earliest Norwegian provincial laws (the Laws of Gulating and Frostating) presumably date to the early twelfth century, as does probably the oldest written Icelandic law, the *Hafliðaskrá*. The Danish provincial laws (those of Scania, Zealand, and Jutland) date to the first half of the thirteenth century.[42]

All of these laws – both the continental and the Nordic ones – mix, in different proportions, customary law with elements of emerging royal and canon law.[43] Scholars have, however, disagreed as to what the actual proportions are. Elsa Sjöholm famously argued that all medieval legislation, including the Nordic laws, was based on Mosaic law and thus consists entirely of new normative material.[44] Although it led to intensive discussion, Sjöholm's position at its most extreme does not correspond to the present state of scholarship. Scholars such as Per Andersen, Inger Dübeck, Mia Korpiola, and Helle Vogt have considerably modified Sjöholm's thesis, whereas others allow customary law even more space.[45] Stefan Brink, Gisli Sigurdsson, and Jørn Øyrehagen Sunde represent the latter group.[46] Despite the differences in opinion as to how much customary law the provincial laws include, it is now commonly accepted that the laws do not directly represent the state of medieval customary law. Describing the scholarly consensus, Fredrik Ljungvist concludes that the laws consist of a mix between 'older domestic customary law, and more active royal and ecclesiastic law-giving with loans from continental, Roman, and canon law, and the influence of the latter grows successively in time.'[47] In addition to these, some elements may have been borrowed from the Danish or Norwegian laws.[48]

Thus the Swedish provincial laws were essentially mixed compilations of customary law and newer elements, but the interests of the Church and the crown were also clearly reflected in many of the solutions of the provincial laws.[49] A steady increase of royal power at the cost of local communities was clearly visible, as one compares the provincial laws with the first realm-wide laws from the mid-fourteenth and fifteenth centuries.[50]

None of the existing manuscripts dates to earlier than the 1280s, which means that the Swedish laws were written down later than their Danish and Norwegian counterparts. This is a fair assessment, although it is sometimes tricky to determine which of the provincial laws are older and which are

younger. Additions and changes were sometimes made to later manuscripts, and normative materials may date to earlier oral (and sometimes written) traditions, which are difficult to trace. With this in mind, the following datings correspond to the prevailing scholarly opinion.[51]

Of the nine provincial laws existing in part or in their entirety, the laws of Gotland (*Gutalagen*)[52] and the older of the two versions of the laws of West Gothia (*Äldre Västgötalagen*) were probably compiled some time in the 1220s.[53] The laws of East Gothia (*Östgötalagen*) may have been put into writing around the same time, but the only existing manuscript contains a version no earlier than from the 1280s.[54] After the local assemblies of the province had accepted the proposed law, the king ratified the Law of Uppland in 1296.[55] The Laws of Västmanland (*Västmannalagen*) and Dalarna (*Dalalagen*), in the versions still existing, were partly transcripts of the Law of Uppland, although the Law of Dalarna was originally much older and remained in parts strikingly archaic.[56] The Law of Hälsingland (*Hälsingelagen*) also incorporated parts of the Law of Uppland and was compiled no earlier than in the 1320s.[57] The dating of the Law of Södermanland (*Södermannalagen*) has caused some disagreement among scholars. The newer of the two existing manuscripts is from 1325 and received royal confirmation in 1327, while the older manuscript may be either from the 1280s or from a period later than that of the Law of Uppland.[58]

The provincial laws can be roughly divided into an older and a newer layer. The older layer refers to the Laws of West Gothia and Gutalagen, whereas the newer layer includes all the rest, that is, the Law of Uppland[59] and those that were, at least to some extent, modelled after it.[60] It is, nevertheless, good to keep in mind the difficulties involved in this division. The survival of manuscripts is altogether a different matter from the dating of a law's initial drafting, and even if the initial draft can be dated, it tells us little about the origin of the legal norms themselves. Law manuscripts were not monuments but living documents in that changes and additions were often included in newer versions. As Stefan Brink has shown concretely for the Law of Hälsingland, the normative ingredients of the provincial laws often came from various sources. Hälsingland's law was probably put into writing at the order of the Archbishop of Uppsala, Olof, whose entourage may well have included Danish clerics versed in canon law. It is, therefore, understandable that many parts of the Hälsingland law are similar and even identical with the Uppsala law. However, as Brink shows, the drafters of the new law could not neglect the early customary law, which they must have had at their disposal in either oral or even written form. Furthermore, Norwegian influence is visible in the legal terminology of the Law of Hälsingland.[61]

All provincial laws, except for the Gutalagen, included a separate chapter on church law, regulating matters such as church jurisdiction, crimes against the church, marriage, and other matters pertaining to canon law. Furthermore, canon law influenced not only chapters on church laws but also other parts of the laws. This article, however, leaves the procedure of the ecclesiastical courts aside and concentrates on the influence of canon law on secular procedure. It would be interesting to know how these norms worked in daily court practice. Unfortunately, however, almost no information on the legal practice of secular courts remains on these questions, and we will need to rely on the law texts alone.

Most of the provincial laws have a chapter on procedure (*rättegångsbalk*). This is the case with the newer laws, such as the Law of Uppland, the Law of Dalarna and the Law of Västmanland. The first laws of the realm, the Law of the Realm for the Countryside and the Law of the Realm for the Town (both from the 1350s), also have procedural chapters. The oldest provincial laws – those of Gotland and West Gothia – do not contain such a chapter. Instead, isolated procedural provisions are scattered in different parts of the law.[62]

Could these chapters be interpreted as the provincial law-drafters' wish to include an *ordo iudiciarius* in the secular laws? The mere emergence of separate procedural chapters in the Swedish medieval laws is most likely a sign of an increased sensitivity towards procedural matters. The division into procedural and substantive law remained far from clear-cut; instead, procedural rules still often appeared in connection with the rules of substantive law.

However, the central idea behind the procedural chapters of the Swedish laws is the same as that of *ordines iudiciarii*: the procedures are described from the beginning (often summons) to the end (the court decision). Differences in details abound, not only between the Swedish laws and canon law, but also between the different Swedish laws. The trend is nevertheless clear: striving towards material truth increased, and this goal was advanced with the help of an organised, efficient procedure.

A change in law of evidence was also on the way and had in fact been so since the Fourth Lateran Council of 1215, when the Church forbade ecclesiastic persons from partaking in ordeals.[63] As Per Andersen has shown, this caused important changes in Denmark, where ordeals gave way to juries.[64] Sweden was no different. Only some provincial laws mention ordeals, slowly but surely on their way out.[65] According to the Law of East Gothia (Chapter on Inheritance, Art. 17), regent Birger Jarl (r. 1248-1266) had prohibited ordeals. Scholars assume that this had occurred around 1250, when Cardinal William of Modena (also known as William of Sabina, 1184-1251) visited

Scandinavia.[66] Apparently, it took time to uproot the custom. The Law of Hälsingland mentions that both Kings Magnus Ladulås (r. 1275-1290) and Birger Magnusson (r. 1290-1318) had again prohibited the ordeal of hot iron. Then, 'because Archbishop Olof had complained that the ordeal of hot iron had returned in Hälsingland', King Magnus Eriksson (r. 1319-1364) once more prohibited the ordeal.[67]

By the time provincial laws were put into writing, canon law of proof had thus started exerting influence on legal procedures and pushing old modes of proof aside. Despite the changes that had occurred, the procedural chapters of the Swedish laws still looked worlds apart from the learned canon law of procedure of the twelfth and thirteenth centuries. The Swedish laws typically dealt with how judges and juries were chosen, when and where court sessions were held, and how oaths were taken. This was an oral procedure, and, therefore, the procedural chapters remain silent on things like written charges, exceptions and replications. Witnesses and written proof played little or no role in this archaic procedure based on oaths and compurgators. The hierarchical court structure of the Church allowed for the Roman-canon appeals system (*appellatio*) to develop, in which an upper court handled the appeal ('devolutive' effect) while the lower court's decision could not be enforced while the appeal was pending ('suspensive' effect). Whatever little the provincial laws contained on remedies akin to appeal, they were based on a different logic than that of the *ius commune*.[68]

That said, it seems likely that the increased procedural interest of the Swedish compilers was the influence of canon law. The reasons behind the need to articulate the procedural rules more clearly could also be the same: to help new and more efficient rules of proof, not embedded in the customs, to take firm root. Although the Swedish procedure remained archaic, it was in a state of change.

The law of summons in the provincial laws

In medieval Sweden, the *ting*, the local administrative and judicial assembly, formed the fundament of the judicial structure in the rural countryside. When deciding legal cases, the assembly consisted of the local district judge and 12 jurors (*nämndemän*), all without formal legal training but a practical knowledge of the law.[69] The Swedish secular courts were to remain largely different from those of southern and western Europe. Whereas learned lawyers gradually took over the (central) courts in Italy, Spain and southern France from the twelfth and thirteenth centuries, and Germany

from the fifteenth century onwards, the Swedish courts remained lay-dominated until modernity. The court sessions were oral, and no minutes were kept. From the point of view of this article, it is essential to note that medieval Swedish secular courts included no legal professionals as either judges, scribes or advocates. The Church and royal central administration employed the few learned lawyers. Obviously, this had a profound effect on how and to what extent the *ius commune* could influence Swedish law.[70]

Some kind of citation must always have been in use in the rural *ting*, regardless of whether a provincial law mentioned anything about how it was delivered and what its legal consequences were. Swedish historians Åke Holmbäck and Elias Wessén[71] point out that there were three ways of summoning defendants to the local *ting*. In former times, when everyone was present at the *ting*,[72] it was thinkable to cite people at the assembly itself. *Later, when assemblies had become a burden for the peasant[73] estate, the assemblies had to be summoned by either the plaintiff himself, his or her representative, or a royal sheriff (länsman).*[74]

The argument of this article is that summoning as a legal institution was taken over from canon law. The old Swedish word '*stämma*' (lit. 'convene')[75] was then given a new legal meaning, as it now began to serve as a translation for the *ius commune* term *citatio* or *in ius vocation*.[76] We do not know, however, what the exact legal use of *stämma* was before it acquired this new meaning. The term may have carried several different meanings, one of which could have been to demand an opposing party to appear at the *ting*.

The older layer of provincial laws does not yet have an *ordo iudiciarius* in the form of a procedural chapter, nor does it have a canon law type of summons. The Laws of West Gothia thus contain no rules on citation. The same is true for the Law of Västmanland. In the Laws of West Gothia, an obscure institution called 'the seven nights' (*sjunätting*) appears, which was apparently a preparatory meeting taking place on the eighth day after an offence occurred, so that seven nights had passed. The plaintiff informed the defendant of the charges, and evidence and oaths were taken. After that, if no settlement was reached, the defendant was probably summoned to an ordinary court session, although in some cases the *sjunätting* may also have given the final decision. The Laws contain, however, no information as to how the defendant was summoned to the *sjunätting* or to the ensuing *ting* session.[77]

The Law of Gotland (*Gutalagen*) has no procedural chapter either and no rules on summoning. Nevertheless, some of its articles make clear that citation was used to make a defendant appear at a court assembly. For instance, Art. 30 (*Om pant* [On guarantee]) says that 'if you have taken a

guarantee from someone for a real debt, then cite him to church or to the assembly'. Several other provisions also mention summons in passing (Art. 31, 32, 38 and 39), but they do not specify how citations were carried out. Instead, the law says that if someone did not appear for a land case, it could be immediately decided even in his absence (Art. 31).[78]

The newer layer of provincial laws usually had a separate procedural chapter, a kind of *ordo iudiciarius*, and they adopted the canonical citation in one form or another.

The Law of Dalarna does not specifically talk about 'citation' or 'appearing in court' but instead talks of 'answering' (*svara*) to the charges. Understandably, the citation must have been oral and probably given through the jury members who normally acted as summoners.[79]

The system of citation in the Law of Dalarna (Chapter on Procedure, Art. 5) was rather tolerant towards defendants. After the sheriff (*länsman*) or plaintiff had cited the defendant, he or she was given three chances to appear at the court assembly – apparently a form of canon law citation. If the defendant did not appear at the first, second or third *ting*, he or she was fined and the fine was seized. The defendant was then given three more chances. If he or she still did not appear at the following two sessions, the defendant was condemned in the actual case at the third (or sixth). Altogether, the defendant could thus skip five sessions and only had to appear at the sixth.[80]

The Law of Södermanland, in its procedural chapter, allowed the defendant three chances to appear in court (Chapter on Procedure, Art. 4). Although the law does not specify how summons was carried out, the rules are otherwise detailed. The law enumerates the lawful reasons for the defendant's absence: sickness, death in the family ('if he has a dead person in his house'), having to search for runaway cattle, fire ('if fire is higher than it should be'), and being on a king's mission. The defendant needed two witnesses to prove the reason for his absence, and if he or she was able to provide them, the defendant was entitled to a fourth chance. If the defendant had no reason for the absence, the judge would order a *ting* session to take place at his or her house, and the defendant would be fined. In case the defendant still did not answer to the charges, the fines would be seized and a fourth court session arranged. If the defendant still did not cooperate, he or she would be fined again and – although this is not quite clear – tried on the main charge.[81]

The law primarily observed in this section is the Law of Uppland, the oldest surviving manuscript of which dates to the last years of the thirteenth century. The Law of Uppland gained special status among the provincial laws, because it was the law in the region surrounding Stockholm and Uppland, where both the king and the archbishop largely resided. The king also promulgated the

Law of Uppland in 1296, and the commission in charge of compiling the law included ecclesiastical representation. The Law of East Gothia represents a somewhat newer layer of legislation, and this law was also compiled with the help of ecclesiastics.

Article III of the Procedural Chapter of the Law of Uppland sets out the rules regarding summons to the court. The defendant was allowed three chances to appear in court. Thus, in the Law of Uppland the third citation was the peremptory one leading to severe consequences. The source of this rule is clear, because the rule of the three summons was common in canon law. Already according to Gratian, the defendant had to be cited three times ('*debet autem illum citare tribus edictis aut uno peremptorio pro omnibus*').[82] As explained above, twelfth-century authors of canon law offered many other solutions: some were willing to allow only one peremptory edict, while others were willing to allow two. The Uppland legislator, however, followed the line of Gratian, which had become dominant, probably not least because it was endorsed by Hostiensis, the leading canonist of the thirteenth century. The origin of the Uppland law of summons becomes especially clear when we look at the rest of the passage in the Law of Uppland: If the defendant missed all three of his chances to appear in court, the proceedings would be taken 'to his farm' (*till hans gård*).[83] The law here is a direct copy of canon law. According to *Liber extra,* if the defendant did not appear in court, the case was taken to his domicile ('*deferentur citationes ad domicilium eius*').[84] The corresponding canon law of summons appears in *Scientiam,* an *ordo* from the late 1230s and of French origin,[85] and in *Summa Aurea* of Hostiensis.[86]

What were the consequences of contumacy? If the defendant failed to appear at this fourth session, the judge would seize his property: 'Now he fails to appear as before; then the judges shall in the same session order an seizure at his farm, every seizure according to the nature of the goods (*Nu þryzkæs han sum fyrre, þa a domæri a samu þingi mæt I garþ hans dömæ, hwart mæt æptir sinni sak.*)'. The seizure did not, however, convert the seized property into that of the plaintiff. Instead, the defendant got a chance to defend himself in one of the next three court sessions.[87]

Again, this Uppland rule was transplanted directly from canon law. According to *Scientiam,* the plaintiff should 'petition to the judge to seize the possession of the defendant … distinguishing between real and personal actions' ('*…actor debet petere a iudice, ut mittatur in possessionem causa rei servandae, habita tamen distinctione, utrum agatur reali aut personali*').[88]

As in the Law of Uppland, in canon law the seizure did not automatically make the plaintiff the owner of the seized goods. He only became a true owner if the defendant did not appear within one year to claim his possessions ('… *qui missus est in possessionem causa rei servandae, non efficitur*

verus possessor, si reus infra annum venerit et noluerit comparare nec stare iudicio…').[89] The goods were thus appropriated as a guarantee. The canon law of summons is presented similarly at least in the *ordo iudiciarius* of Ricardus Anglicus, probably of the Bolognese school and dated to 1196.[90] Also in North Italian town laws, contumacy could result in the seizure of goods.[91]

The basic structure of the law of summons is thus the same in the Uppland law and canon law. Some of the details differ, though, which is understandable considering the different procedural backgrounds to which the institution of citation belonged in canon law and the Uppland law. Whereas the Uppland law dwells at length on the role of the compurgators in the court's sessions following the seizure at the defendant's domicile, canon law (such as it is represented in some of the *ordines*, for instance *Scientiam*) distinguishes between real and personal actions as far as the seizure is concerned. Whereas the canon law of summons was in the hands of professionals, in Uppland law the role of the local community was pivotal. Therefore, the Uppland law has compurgators while canon law does not. On the other hand, canon law refers to different actions pertaining to real and personal goods, while Uppland more vaguely states that the judge must consider the different 'nature of goods'. The differences, hardly surprisingly, result from the legal institution being transplanted to an environment that is different from its origin.

The Law of Uppland was the leading provincial law in that many of its solutions were used verbatim in other provincial laws, and eventually in the laws of the realm. The Law of Uppland also served as the main channel through which the material contents of medieval Swedish provincial laws were finally transmitted to the Law of the Realm of 1734. It also follows the systematics of the Law of Uppland.

The Law of East Gothia, unlike the other provincial laws, describes the actual summoning. According to the Law (Chapter on Procedure, Art. 21), when a peasant wanted to sue another peasant, he needed to go to the future defendant's homestead accompanied by two men (apparently as witnesses). The summoning had to occur between sunrise and sundown. The same two witnesses needed to come to the actual court session. A peasant could only summon one defendant per day, whereas the king or bishop's prosecutor could summon three.[92]

The Law of Hälsingland (Chapter on Procedure, Art. 3), which according to common understanding belongs to the latest of the provincial laws, is the most efficient of all. The defendant had only one chance to appear in court; if he failed to appear, he was fined. In case the defendant denied having ever received a summons, the plaintiff had to prove citation by two witnesses and 14 compurgators. It was also possible to cite a defendant at church or directly at the court assembly (as was the case

according to the Law of Uppland), in which case no proof was needed. One might say that the citation in these last two cases, church and court assembly, was notorious.[93]

The Law of the Realm of King Magnus Eriksson from around the mid-fourteenth century was the first statute covering the entire Kingdom (except for towns). As for its sources, the Law of the Realm was heavily based on the provincial laws of East Gothia, Uppland, Västmanland and Södermanland, while Magnus Eriksson's earlier statute law played an important role as well.[94] The Law of the Realm of Magnus Eriksson adopted the same system of citation as the Law of Dalarna: both laws gave the defendant six chances to appear in court. The Law of the Realm, however, also specified how the actual citing took place exactly the same way that the Law of East Gothia did. According to the Law of Realm (Chapter on Procedure, Art. 9), the plaintiff had first to go to the defendant's homestead with two witnesses and cite him, telling him what he was charged for..[95]

The Law of King Christopher of 1442 was the next realm-wide law given after Magnus Eriksson's Law of the Realm, although it can also be argued that the former was only a revised version of the latter. According to previous studies, about 80% of the normative material of the new law was copied from the Law of Magnus Eriksson. The remaining 20% mainly represent the tightening of penal law. Harsher penal law, in turn, has been seen to be the result or a means of centralising political power.[96] The tightening grip of political power was also reflected in the way summons to court was devised in the new law.

The Law of King Christopher followed the canon law based technical solution that the Law of Dalarna and Magnus Eriksson's Law of the Realm had presented, but the new law allowed for much less flexibility. For the first time, the judge himself was now primarily responsible for the summons, which is a turn towards a more inquisitorial procedure. The plaintiff, then, was only the lawgiver's secondary choice to deliver the summons. Chapter of Procedure, Art 12 (pr.) states that 'the one in charge of judging must, in the presence of two witnesses, cite the one being sued, if he is close enough, or give the plaintiff two [---] men, so that they may cite the one being sued, wherever they meet him.' If necessary, the plaintiff and the two men would need to go the defendant's homestead in order to deliver the summons, 'whether he is home or away'.[97]

The Law of King Christopher allowed only three citations instead of six. Nor were the court assemblies allowed to be idle any more, at least less so than before, for now a consequence was attached to every court meeting which the summoned defendant failed to attend. The first time the defendant was absent, unless he had sent witnesses to give grounds for legal absence, he was fined.

The second time, the plaintiff would present his witnesses, and the absent defendant would be fined again. At the third session, the court would try the case, even in the absence of the defendant.[98]

The Danish connection

Before concluding, the possibility of Danish influence on the Swedish systems of summons merits consideration. As mentioned above, the Danish provincial laws were older than the Swedish ones. The oldest of the three major Danish provincial laws, the Law of Scania, was written down roughly between 1202-16, and the Law of Zealand (the so-called King Erik's Law of Zealand, clarifying and supplementing the older King Valdemar's Law) after 1220, while King Valdemar II is thought to have confirmed the Law of Jutland in 1241.[99] Instead of a direct influence of canon law through the contribution of Danish or other canon lawyers in the drafting process, could the Swedish summoning rules of canon law origin have been copied from the Danish provincial laws?

The Danish rules on summoning indeed resemble the Swedish ones. According to the Law of Scania, the plaintiff had to make his accusation public at a first *ting* meeting. At the second meeting, the defendant had to respond to the charges. If defendants failed to appear, they were fined, and failure to show up at the third meeting meant losing the case.[100] Similarly, according to King Erik's Law of Zealand, the plaintiff could publicize the transgression against the law at the *ting*. The defendant was then allowed several opportunities to appear, and failure to appear was followed by a declaration of outlawry only at the fifth *ting*.

In addition to the traditional method of initiating court proceedings, King Erik's Law of Zealand introduced another method, that of private summoning. The plaintiff had two local men deliver the summons to the defendant one or two days before the *ting* session. The summoners had to ensure that the defendant was accompanied by two kinsmen, who could testify later to the correctness of the summoning.[101]

The Law of Jutland also required the plaintiff to publicize his case at a *ting* meeting. In some serious cases, 'case-initiating' evidence was needed. According to the Law of Jutland, a defendant lacking a valid excuse could postpone his appearance until the fourth *ting* meeting before losing the case by default.[102]

As regards initiating court proceedings, obvious similarities exist between the Danish and Swedish provincial laws. In both the Danish and Swedish laws, defendants were allowed several chances to appear until they suffered the consequences of contumacy. Some of both the Danish and Swedish laws contain detailed rules as to legal reasons for delaying appearance, which testifies to a heightened sensitivity towards rendering court proceedings increasingly effective. These types of rules were typical of canon law as well. It is impossible to say whether the rules on lawful absence or the principle of allowing the defendant several chances to appear in court came to the Swedish laws directly from canon law or as mediated via the Danish laws.

Here we come to the most important difference between the Danish and Swedish provincial laws. With the exception of the Law of Zealand, the Danish laws did not yet know summons of the canon law type. The oldest of the Swedish laws, the Laws of West and East Gothia, also had public denouncement as its default way of initiating a case.[103] While some newer Swedish laws still mentioned public denouncement, most no longer did. The Law of Uppland (Chapter on Procedure Art. 3) still gives public denouncement as the default procedure, but also introduces summons in its Chapter on the Church (Art. 12).[104] When the newer Swedish provincial laws were put into writing, public denouncement as the default way of initiating a case seems to have appeared outdated and was replaced by summons transplanted from canon law.[105]

One more important difference should be mentioned. The Uppland solution to move the fourth session to the defendant's farmstead and seize his property was unknown in the Danish laws and, therefore, must have come directly from canon law.

We still need to address the tricky question of whether the arrangement of two summons witnesses in the Law of Zealand had Roman law origins, as Andersen briefly suggests.[106] The Provincial Law of East Gothia, and the Land Laws of Kings Magnus Eriksson and Christopher, as explained above, had similar arrangements. The only difference was that, by the Swedish laws, two witnesses sufficed, whereas in Zealand, the plaintiff had to make sure that two of the defendant's kinsmen were also present when the plaintiff delivered the summons – thus, four extra persons altogether.

In post-classical Roman law, *apparitores* were public servants of magistrates. In addition to other tasks, the *apparitores* served as summoners.[107] Similar *apparitores* figured in many *ordines iudiciarii* as well. As so often in *ius commune* procedure, details vary tremendously from one author to another, and from region to region. Although the judge could in principle deliver the summons (written or oral) himself, an *apparitor* (or according to some *ordines*, two) was often used.[108] Differences between the Nordic solutions and *ius commune* were, however, considerable. Whether

delivered by the judge himself or by his personnel, at *ius commune* (and in post-classical Rome) the judge always approved the summons before its delivery. In the Laws of Zealand and East Gothia, and King Magnus Eriksson's Land Law, this was not the case. There, the two witnesses (and, in Zealand, two kinsmen) only passively witnessed the plaintiff serve the summons, which no judge had approved beforehand. These may well have been Nordic versions of the *ius commune* theme, and at the same time, they were surely practical ways of avoiding evidentiary difficulties. Interestingly, for the first time in Swedish medieval legal history, King Christopher's Land Law required that the judge, either personally or through *apparitores*, deliver the summons to the defendant. King Christopher's Law thus meant a full-scale adoption of all the essential *ius commune* characteristics of summoning.

The drafters of the Swedish provincial laws clearly drew inspiration from the innovations that canon lawyers produced during an immensely productive thirteenth century. For that, the Danish and the early Swedish provincial laws were simply too early, as roughly half a century separated the latest of the Danish provincial laws and the oldest Swedish laws from the newer layer of Swedish laws put into writing. As Swedish medieval wills and donations demonstrate, the latest canonical collections and commentaries were increasingly owned by clerics and institutional libraries in the course of the thirteenth and early fourteenth centuries.[109] Direct influences from canonical collections and *ordines iudiciorum* in later Swedish provincial laws fit this chronology.

Conclusion

The canon law of summons represents the most developed law of its kind from around the time when the newest stratum of the Swedish provincial laws – the Laws of East Gothia, Södermanland, Helsingland, and Uppland, the most influential of the Swedish provincial laws – was being compiled. It is therefore quite understandable that the canon law model found its way into these laws. They followed canon law to the extent that we may speak of a legal transplant. The provincial laws differed in the details of how they regulated summons, but so did canon law. Some of the laws allowed for one, some three, some four, and some six citations before the process was called to a halt and the trial was held despite the defendant's continued absence. The concept of peremptory citation was thus introduced. Some of the laws also regulated in detail how the summons was to be delivered: by whom, when, and whether witnesses were needed. In some laws, these rules were not

put into writing, although there may, nevertheless, have been rules on it. In addition, some of the provincial laws also incorporated the canon law rule according to which the court, after a certain number of unsuccessful citations, would go to the defendant's homestead to hold court. The drafters of one law also decided to include rules on lawful impediment, also taken from the scholarship of canon law.

Due to the lack of learned lawyers in secular courts, a wholesale reception of canon procedural law would have been unthinkable in Uppland or any other Swedish region. The canon law of summons, at least in simplified form, could be instituted in the unlearned Swedish environment. Some rules on citation, and preferably effective ones, were also critical from the point of view of the secular and ecclesiastical rulers, attempting to spread their judicial power into a kinship-dominated, archaic society. After all, it was crucial to get the defendants to court in the first place. If they could not be forced to appear, the rest of the law mattered little.

The oldest provincial law contains no norms on summons, which of course does not mean that defendants were not summoned in some way. However, the fact that summoning to courts became an object of lawgiving in the newest provincial laws indicates increased efforts to render legal proceedings more effective than before. These effective means of summoning, and not the silence of the more archaic older layer of provincial laws, was the natural choice to settle the matter in the laws of the realm. The last medieval realm-wide law, the Law of King Christopher, then further tightened the grip of judicial authority on uncooperative defendants.

The development of the law of summons demonstrates how the latest international innovations in procedural law, which the twelfth- and thirteenth-century canonists had developed, were adopted first in the Swedish provincial laws and then in the laws of the realm. Without doubt, channels existed through which information on the novelties of canon law found their way to Sweden. The Church itself, which its bureaucracy and at least some learned personnel, was of course omnipresent in Europe. Also in Sweden, the Church used canon law citation in its courts and supervised that it was properly interpreted.[110]

Swedish students enrolled in the Universities of both Bologna and Paris from the thirteenth century onwards, and a system of church stipends developed during the second half of the thirteenth century.[111] The students were sent to study theology, and we have little knowledge of whether and to what extent they acquainted themselves with canon law. It is, however, certainly possible that they did, and some may even have bought books, which they brought home.

Canon law books were rare in Sweden before the mid-thirteenth century but became considerably more abundant from the second half of the century onwards. Not surprisingly, copies of *Liber extra* and *Decretum Gratiani* figure the most frequently in the sources that Mia Korpiola has studied. Commentary works existed in Sweden as well. Of them, *Summa super titulis decratalium* of Gottfredus de Trano was the most common, while works such as *Summa aurea* of Hostiensis and *Casus longi decretalium* (often attributed to Bernhard of Parma) appeared less frequently. Of actual *ordines iudiciarii* in circulation in late medieval Sweden, at least William of Durand's *Speculum iudiciale* and *Ordo iudiciarius* of Tancred deserve a mention.[112]

Thus, it is not an exaggeration to say that medieval Swedish canonists and legislators had good or at least sufficient access to the major sources of contemporary canon law. The most important solutions to the legislative problem concerning citation were available to them.

It is therefore not surprising that the most efficient solutions found their way first into some of the most influential Swedish provincial laws and then into the realm-wide legislation.

The canon law of summons, adopted in the Swedish medieval laws, was part of two broader developments. First, the rules on summons were probably part of the idea of *ordo iudiciarius*, which was also adopted in Sweden. In Sweden, the rules on summons were always accompanied by a separate procedural chapter, which regulated the whole procedure chronologically from beginning to end – although some laws were more elaborate on some details than others were. It is not far-fetched to think that the procedural chapters were in fact the Swedish equivalent of *ordines*, although the Swedish '*ordines*' were of course legislation, not scholarly literature. Second, the Swedish '*ordines iudiciarii'* with their rules on summons reflect, for their part, the inquisitorial principle making its way into the Swedish procedure. The Swedish rulers, just as their counterparts elsewhere in Europe, were making a conscious effort to organise court procedures into more uniform and efficient form.

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Notes

1.“*Citatio est principium sive fundamentum ordinis iudiciarii.*” This is the formulation in Bernhard of Parma’s *Glossa Ordinaria* (ca. 1260) to the Decretals of Gregory IX (1234). See, *Glos ord* ad X 1.2.10 sv *non conventi*; cited in Helmholz, “Citations”, 248–249.
2. Scholars of medieval canon law no longer stress the differences between eleventh-century canon law and the “classical canon law” (as it has often been called) taking shape after Gratian’s *Decretum.* On the continuity between early and high medieval canon law, see Austin, “Medieval Church Law,” 1–18.
3. Donahue, “Procedure in the Courts,” 95.
4. Suffice it to mention here just a few fundamental treatments of the subject. They include Berman, *Law and Revolution*; Condorelli, Roumy, and Schmoeckel, *Der Einfluss der Kanonistik*; and Pennington and Hartmann, *Medieval Canon Law.*
5. See, however, literature on contumacy, such as Pazzaglini, *The Criminal Ban*.
6. Brasington, *Order in Court*, 20, 42–50. On the terminology, see Nörr, “Ordo iudiciorum,” 327–344; Roumy, “Les origines pénales,” 333–340; and Fowler-Magerl, *Ordines iudiciarii*, 19–24.

7. See Fried, "Die römische Kurie," 162; Pennington, "The Jurisprudence of Procedure," 127–131. Fowler-Magerl, unlike Fried and Pennington, does not categorize the letter as an *ordo iudiciarius*; Fowler-Magerl, *Ordines iudiciarii*, 24–25; and likewise Brasington, *Order in Court*, 82–86.
8. See Fowler-Magerl, *Ordines iudiciarii*; and Brasington, *Order in Court*.
9. Pennington, "The Jurisprudence of Procedure," 134–135.
10. On the beginnings of procedural legal scholarship, see Fried, "Die römische Kurie"; and Landau, "Die Anfänge der Prozessrechtswissenschaft."
11. On the development of the canon law of citations in England, see Helmholz, "Citations and the Construction," 247–276.
12. Pennington, "The Jurisprudence of Procedure," 134.
13. See the articles in Willoweit, *Die Entstehung des öffentlichen Strafrechts*; Jerouschek, "Die Herausbildung des peinlichen Inquisitionsprozesses,"; Koch, *Denunciatio*; Kéry, Inquisitio – denunciatio – exception"; and Pihlajamäki and Korpiola, "Medieval Canon Law."
14. On the emergence of the inquisitorial procedure, see Trusen, "Der Inquisitionsprozess," 168–230.
15. On the growth of "public criminal law" in medieval Europe, see Willoweit, *Öffentlichen Strafrechts*; and Kéry, *Gottesfurcht und irdische Strafe*.
16. See Meccarelli, *Arbitrium*.
17. Watson, *Legal Transplants.*
18. For an excellent summary of the scholarly debates extending over four decades, see Cairns, "History of Legal Transplants." Some scholars prefer terms such as legal transfer or legal translation when referring to essentially the same phenomenon.
19. See Graziadei, "Study of Transplants".
20. The problem is thus of the kind which comparative legal historians classify as reception or legal transfer.
21. Carraway Vitiello, *Public Justice*, 84–85.
22. See Litewski, *Der römisch-kanonische Zivilprozeß*, 252–254.
23 . Cited and translated at Pennington, "The Jurisprudence of Procedure," 139.
24. Pennington, "The Jurisprudence of Procedure," 145–14; Helmholz, "Citations," 254–255.
25. X.2.14.VI.
26. See Hostiensis, *Summa aurea*, col. 497, where the canonist explains citations procedures in more detail: "*Si citatus trib. edictis vel uno pro omnibus peremptorio non venit, seu non obedivit, vel paruit, sed illicentiatus recessit*."
27. Litewski, *Der römisch-kanonische Zivilprozeß*, 272.
28. Litewski, *Der römisch-kanonische Zivilprozeß*, 257–258.
29. Litewski, *Der römisch-kanonische Zivilprozeß*, 259–261.
30. Litewski, *Der römisch-kanonische Zivilprozeß*, 282–284.
31. Litewski, *Der römisch-kanonische Zivilprozeß*, 270–271.
32. Donahue, "The Ecclesiastical Courts: Introduction," 277–278.
33. Guillelmus Durantis divided his *Speculum iudiciale* into four parts: persons of a legal process, civil procedure, criminal procedure, and examples of documents.
34. Donahue, "Procedure in the Courts," 95.
35. Tancred first explains the doctrine according to which inquisitorial procedure could begin if there was "rumour" (*fama*) that a certain person had committed a crime. A private accuser was then not necessary, but the defendant needed to be cited: "*Debet autem citare infamatum et eius accusationem audire*." According to a slightly far-fetched argument in the fourth question of the *Summula*, God had sent the angels to the Sodomites, so that they would be present when the city was condemned to destruction. A further argument came from Luke 16:2, where the evangelist tells a story about a rich man who entrusts his money to an administrator. When the rich man suspects that the administrator is wasting his money, he calls the administrator to him and says: '*Redde*

rationem villicationis tuae: iam enim non poteris villicare' ('give an account of thy stewardship; for thou mayest be no longer steward'). The *Summula* is printed in Fraher, "Tancred's 'Summula de criminibus'," 29–35.
36. See Tancred, *Ordo iudiciarius*, 151–152. For the practice in Italian cities, see Pazzaglini, *The Criminal Ban*, ch. 2; and Carraway Vitiello, *Public Justice*, 84–85.
37. See Vallerani, *La giustizia pubblica medievale*.
38. See Fenger, *Romerret*, 55–56.
39. Helmholz, *Canon Law*, 4–5; and (especially for marriage law) Korpiola, *Regional Variations*.
40. On the rise of legislative ideology in thirteenth-century Europe, see Gagnér, *Studien.*
41. Ljungqvist, *Lagfäst kungamakt*, is an excellent comparative survey of the consolidation of royal power in high medieval Denmark, Norway, and Sweden. On the medieval Scandinavian laws, see especially 81–103.
42. See Mia Korpiola, "High and Late Medieval Scandinavia", 381–383.
43. See Ljungqvist, *Lagfäst kungamakt*, 35–37; on Danish and Norwegian kings using law to emphasise their social position, see Sigurđsson, Pedersen, and Berge, "Making and Using the Law." See also Gösta Åqvist, *Kungen och rätten.*
44. Elsa Sjöholm, *Sveriges medeltidslagar: Europeisk rättstradition i politisk omvandling*. Stockholm: Institutet av rättshistorisk forskning, 1988; and "Sweden's Medieval Laws: European Legal Tradition – Political Change." *Scandinavian Journal of History* 15 (1990), 65–87.
45. See Andersen, "Studier" and "Legal Procedure"; Dübeck, "Skånske lov"; Korpiola, "Ecclesiastical Jurisdiction"; and Vogt, *Slægtens function.*
46. Brink, "Creation"; Sigurđsson, "Öyrehagen." *Speculum*.
47. Ljungqvist, *Lagfäst kungamakt*, 87.
48. Danish clerics may have helped in the drafting of the Law of Uppland, and Norwegian influence is evident in the Law of Hälsingland. See Brink, "Creation."
49. For examples, see Korpiola, "On Ecclesiastical Jurisdiction." 216–234.
50. See Fenger, *Romerret*; Strauch, *Mittelalterliches nordisches Recht*, 518–524; Ekholst, *Punishment*, 5–11. On the drafting procedure and for a more detailed analysis of the normative contents of Uppland and Hälsingland Laws, see Brink, "Creation"; Lennersand, "Lagkommissioner"; and on the oral roots of the provincial laws, Brink, "Oral Fragments".
51. A helpful summary of the most current research can be found in Ljungvist, *Lagfäst kungamakt*, 443–447.
52. On the Law of Gotland, see Peel, *Guta lag*.
53. For most provincial laws, a considerable number of editions and translations to modern Swedish exist. The editions of Åke Holmbäck and Elias Wessén on the provincial laws, and Magnus Eriksson's Law of the Realm and Town Law (1933-1966) are reliable and widely used. This article, whenever possible, from now on mainly refers to the editions of Carl Johan Schlyter, which he published in 1827-77 as *Samling af Sweriges Gamla Lagar I-XIII* (volumes I-II together with Hans Samuel Collin). On the Older Law of West Gothia, see Schlyter I; Sjöros, *Äldre västgötalagen*; Beckmann, *Äldre Västgötalagen*; Wessén, *Äldre Västgötalagen*; and Strauch, "Västgötalag."
54. Schlyter II; Freudenthal and Vendell, *Östgötalagen med förklaringar*; Ståhle and Holm, *Studier över Östgötalagen*; and Strauch, "Östgötalag."
55. King Birger's confirmation, printed in Schlyter III, 1–6. See also Lennersand, "Lagkommissioner", 307–310.
56. Schlyter V; Holmbäck and Wessén, *Dalalagen och Västmannalagen*; and Strauch, "Västmannalag," 22–27.
57. Schlyter VI; Kjellström, *Hälsingelagen*;; Strauch, "Hälsingelag"; and Brink, "Hälsingelagen".
58. See Wiktorsson, *Södermannalagens B-handskrift*. On the drafting process of the Law of Södermanland, see Lennersand, "Lagkommissioner", 310–312.

59. On the Law of Uppland, see Friesen, *Upplandslagen efter Ängsöhandskriften*.
60. Although the dating of the Law of Södermanland is notoriously difficult, I will include it in the newer layer.
61. Brink, "The Creation of a Scandinavian Provincial Law", 438–442.
62. See, for instance, the rules on homicide which typically mix procedural and substantive elements; the Older Law of Western Gothia (Chapter on Homicide, Art. 1; Schlyter I, 10–12) and the Law of Eastern Gothia (Chapter on Homicide, Art. 2; Schlyter II, 46–48).
63. On the disappearance of ordeals in Europe, see Bartlett, *The Medieval Judicial Ordeal*, 127–135.
64. See Andersen, *Legal Procedure*, 198–199.
65. For the first time for Sweden, ordeals appear in 1172 in a decretal by Pope Alexander III, in which the pontiff condemns the use of ordeals against clerics. Migne, *Patrologiae cursus completus*, col. 854–860. From medieval fragments no longer existing but cited by Sweden's Reformator Olaus Petri in "Pagan Law" (*Hednalagen*), we also know that, in some parts of Sweden, duels were used before the prohibition of 1215 took effect. See Schmidt, *Die Richterregeln*, 17–24.
66. Holmbäck and Wessén 1933, "Östgötalagen," 323.
67. According to the Law of Hälsingland (Chapter on Inheritance, Art. 16), '1320 years after our Lord's birth, on Wednesday following the day squire Magnus had been decapitated, eight days after the Holy Trinity Day in Stockholm, because Archbishop Olof had complained that iron bearing had come to use again in Hälsingland, after it had been abolished in the days of King Magnus [Ladulås] and King Birger [Magnusson], it was ordered by the council of King Magnus [Eriksson], who is king over all Sweden and Norway, that iron bearing shall never again be used, and this way the same law was taken to use which had been given earlier for [other] cases involving iron bearing, [that is,] a jury of twelve men, and fines shall be given for every case, decided by the jury, as if the case had been decided through the ordeal of hot iron...' Holmbäck and Wessén, *Södermannalagen och Hälsingelagen*, 309 (translation here by HP).
68. On Roman-canon appeal, see Diestelkamp, *Die Durchsetzung*.
69. Towns had courts of their own, but that is beyond the remit of this discussion. The urban concentrations of the predominantly medieval Sweden were relatively small and insignificant, and little is known of their laws before the fourteenth century. In Sweden, as elsewhere, the ecclesiastical courts were part of the universal papal jurisdiction. While there were also provincial courts, chaired by the *lagman*, the provincial judge, and royal delegated courts (*räfst*), a modern and hierarchical system of appeal was only enforced in the early seventeenth century. On the appeals system, see Korpiola, "Svea Court of Appeal."
70. On Swedes' legal studies abroad in the Middle Ages, see Thörnqvist, "Svenska studenter" and Ferm, "Swedish Students", 29.
71. Åke Holmbäck was professor of legal history at the University of Uppsala, while Elias Wessén, professor of Scandinavian languages at the University of Stockholm, was a renowned scholar of historical philology.
72. In modern terms, the medieval Swedish local assembly, or *ting*, had political, administrative and judicial functions.
73. The use of the English term 'peasant' as a translation of the Swedish term '*bonde*' has caused some discussion. Scholars agree that that the provincial laws were drafted with mainly the *bonde* in mind as a kind a default case. *Bonde*, strictly speaking, refers to a land-owning free man thus excluding tenants and other country-dwellers. However, the use of the term *bonde* was not always entirely consequent in the provincial laws, and the term was sometimes extended to cover lower social groups in the countryside as well. See Ekholst, *Punishment*, 8–20. Because of this and in the absence of a better translation, this article will use the term peasant as translation for *bonde*. See also, Granlund, "Bonde", in *Kulturhistoriskt lexikon*.
74. Holmbäck and Wessén, *Södermannalagen och Hälsingelagen*, 230.

75. See *Ordbok öfver svenska medeltids-språket*, 539–540.
76. Examples of court practice are rare. See, however, a case from 1299, in which Johan Liten had "summoned, or as it is said in Swedish, *stæfnæ*" to court (*ting*) the relatives of Bengta, a nun, to agree on how Bengta's estate was to be divided. The citation had, according to Johan, occurred according to the customs of the land and legally ("*secundum leges terre rite & legaliter*"). SDHK-nr: 1819, *Svenskt Diplomatarium*.
77. Holmbäck and Wessén, *Dalalagen och Västmannalagen*, XLVIII–XLIX; Brink, "Oral Fragments", 149–150.
78. Schlyter VII, 72–73, 80–83. See also Holmbäck and Wessén, *Skånelagen och Gutalagen*, XCIV–XCV.
79. Holmbäck and Wessén, *Dalalagen och Västmannalagen*, 102.
80. Holmbäck and Wessén, *Dalalagen och Västmannalagen*, 102–103.
81. Schlyter IV, 176–177.
82. C. XXIV, q.3, c.6.
83. Schlyter III, 260–261.
84. X. II. 14. 3.
85. Wahrmund, *Ordo iudiciarius 'Scientiam'*.
86. On Henricus de Segusio (Hostiensis), see Pennington, *Popes, Canonists and Texts, 1150–1550*, XVI.
87. Law of Uppland, Procedural Chapter, Art. 3; Schlyter III, 260–261.
88. *Scientiam*, p. 3; X.II.6.5.
89. *Scientiam*, p. 3; D. XXXIX. 2, 15 § 16.
90. Wahrmund, *Ricardus Anglicus*, 107.
91. See Carraway Vitiello, "Contumacy," 99–132.
92. Schlyter II, 179–180.
93. Schlyter VI, 86,
94. Holmbäck and Wessén, *Magnus Erikssons landslag*, XXXIII–XXXIV. On the drafting process of the Law, see Lennersand, "Lagkommissioner", 312–317.
95. Schlyter X, 216–217.
96. See Ulkuniemi, *Kuningas Kristoferin maanlaki*.
97. Schlyter XII, 245–246.
98. Ibid.
99. Tamm and Vogt, *The Danish Medieval Laws*, 97–105, 111–113. 153–154, 238–239.
100. Andersen, *Legal Procedure*, 142–143.
101. Andersen, *Legal Procedure*, 158–159.
102. Andersen, *Legal Procedure*, 170–178.
103. The Older Law of Western Gothia, Art. 1 (Schlyter I) and the Newer Law of Western Gothia, Art. 1 (Schlyter I).
104. Similarly, Addition 18 (Schlyter III), The Law of Västmanland (Ch. on Procedure, Art. 9; Schlyter V) also still has public denouncement as its default procedure. The Laws of Eastern Gothia, Södermanland, Hälsingland and Dalaland do not, and neither do King Magnus Eriksson's Laws of the Realm and of the Town.
105. Holmbäck and Wessén assume that the system of initiating cases directly at the *ting* functioned well when people still diligently attended the assembly. When attendance became a burden, public denouncement needed to be replaced by the more effective summons. Holmbäck and Wessén, Södermannalagen, 230.
106. See Andersen, *Legal Procedure*, 157–158. Without developing the connection further, Andersen observes that the procedure here imitated Roman civil procedure. Andersen refers to Kaser, *Das römische Zivilprozessrecht*, 566–576. However, I do not see the link between Kaser's text and the procedure in the Zealand law.

107. On the *apparitores* in Rome, see Purcell, "Apparitores".
108. For details, see Litewski, *Der römisch-kanonische Zivilprozeß*, 132–133, 248–249, 259–262; see also Brasington, *Order in the Court*, 134–35.
109. Korpiola, "Literary Legacies".
110. See the case from the year 1198, in which Pope Innocent III reminds Absalon, the Archbishop of Lund, of the importance of following the procedural law of the Church. Here, Innocent repeats the rule of three summons: '*Si qui vero in purgatione defecerint, vel ad synodum venire contempserint, ad proximam Ecclesiam secundae synodi vocantur pro contumacia corrigendi: qui si forte non venerint, vel incorrigibiles ibi apparuerint, ad tertiam Ecclesiam tertiae synodi legitime citabuntur: & si incorrigibiles adhuc extiterint, pro contumacia sua anathematis sententia ferientur*.' SHDK-nr: 278, *Svenskt diplomatarium.*
111. Kumlien, "Svenskarna," 143–169.
112. Korpiola, "Literary Legacies," 98–102.